



Department of Energy

Washington, DC 20585

July 16, 2010

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Joseph Nemec, President
Bechtel Jacobs Company LLC
Building K-1225/MS-7294
P.O. Box 4699
East Tennessee Technology Park
Oak Ridge, Tennessee 37831-7294

SEA-2010-01

Subject: Preliminary Notice of Violation

Dear Mr. Nemec:

The Department of Energy's (DOE) Office of Health, Safety and Security's, Office of Enforcement has completed its investigation of Bechtel Jacobs Company, LLC (BJC) with respect to the theft of classified matter at the East Tennessee Technology Park (ETTP) in October 2006. Based on the on-site investigation and evaluation of the evidence in this matter, and in consideration of information you and your associates provided during an enforcement conference on August 18, 2009, I am issuing the enclosed Preliminary Notice of Violation (PNOV) in accordance with 10 C.F.R. § 824.6. A summary of the August 18 enforcement conference is also enclosed.

In this case, barrier matter containing classified technology used in ETTP's uranium enrichment process for the production of U.S. nuclear weapons was unlawfully removed from Building K-1037 by a BJC employee, who attempted to sell the matter to a foreign government. As set forth in the PNOV, the DOE Office of Enforcement finds that:

- BJC failed to implement effective integrated security measures for the protection and control of classified matter, specifically to prevent, detect, and deter the unauthorized removal of classified matter from K-1037.
- The BJC internal assessment process to self-identify classified information security deficiencies was ineffective.
- BJC failed to mark the subject matter (i.e., barrier manufacturing equipment and boxes containing unused/used barrier matter) to identify its classified status (at the Confidential/Restricted Data level and category).

The programmatic nature of the security noncompliances at ETTP, specifically those resulting from the **clean-up activities** is particularly troubling. In addition some of these



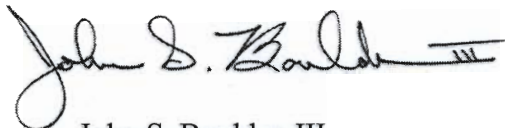
non-compliant security conditions existed over an extended period of time before being disclosed by the Federal Bureau of Investigation in January 2007 during its undercover investigation of the subject event.

The enclosed PNOV details BJC's security management deficiencies relating to the theft of the classified barrier matter that underlay DOE's finding of two Severity Level I and one Severity Level II violations and the proposed assessment of a civil penalty of \$562,500.

Pursuant to 10 C.F.R. § 824.6(a)(4), BJC has the right to submit a written reply to the PNOV within 30 calendar days of receipt. A reply must contain a statement of all relevant facts pertaining to the violation alleged and must otherwise comply with the requirements of 10 C.F.R. § 824.6(b). Pursuant to 10 C.F.R. § 824.6(c), failure to submit a written reply within 30 days constitutes relinquishment of any right to appeal any matter in the PNOV; and the PNOV, including the assessment of penalties, constitutes a Final Order.

After reviewing your response to the PNOV, including any proposed additional corrective actions, DOE will determine whether further action is necessary to ensure BJC's compliance with regulations relating to the security or safeguarding of classified matter.

Sincerely,



John S. Boulden III
Acting Director
Office of Enforcement
Office of Health, Safety and Security

Enclosures: Preliminary Notice of Violation, SEA-2010-01
Enforcement Conference Summary

cc: Brenda Tilley, Bechtel Jacobs Company, LLC
Mark Holowczak, Bechtel Jacobs Company, LLC

Preliminary Notice of Violation

Bechtel Jacobs Company, LLC
East Tennessee Technology Park

SEA-2010-01

The Department of Energy (DOE) conducted an investigation into the facts and circumstances surrounding the theft of classified matter that contained information related to uranium enrichment at the East Tennessee Technology Park (ETTP), discovered in January 2007. Following the investigation, DOE issued an investigation report, *Theft of Classified Matter from the East Tennessee Technology Park*, hereinafter referred to as "Investigation Report,"¹ to Bechtel Jacobs Company, LLC (BJC), the management and integration contractor for ETTP, on July 1, 2009.

The investigation identified multiple security violations that created noncompliances which collectively contributed to the unauthorized removal and unlawful attempt by a former BJC employee to sell classified matter to a foreign government. The noncompliances included: (1) the absence of effective and integrated security systems; (2) ineffective self-assessment processes that failed to identify any of the broad classified information security and physical security noncompliances disclosed by this event; and (3) the lack of classification markings.

Pursuant to section 234B of the Atomic Energy Act of 1954, as amended, and DOE regulations at 10 C.F.R. § 824.6, DOE hereby issues this Preliminary Notice of Violation (PNOV) and proposes a civil penalty for two Severity Level I and one Severity Level II violations of DOE's classified information security requirements contained in 10 C.F.R. Part 1045, *Nuclear Classification and Declassification*, and the DOE Manual 470.4 series.

Severity Level I violations are defined in paragraph V.b of 10 C.F.R. Part 824, Appendix A, *General Statement of Enforcement Policy*, as "the most significant" and "reserved for violations of classified information security requirements which involve actual or high potential for adverse impact on the national security." Severity Level II violations are defined in the same paragraph cited above, as "violations [that] represent a significant lack of attention or carelessness toward responsibilities of DOE contractors for the protection of classified information which could, if uncorrected, potentially lead to an adverse impact on the national security." The violations are listed below.

¹ The Investigation Report, dated July 1, 2009, sets forth the investigative findings that underlie the violations asserted in this PNOV.

Summary of Violations

In summary, DOE finds that BJC committed the identified violations listed below.

1. Violation of Requirements for Information Protection – BJC failed to implement effective and integrated security systems for the protection and control of classified matter, specifically to prevent, detect, or deter the unauthorized removal of classified matter from ETP. (See Violations, section I.)
2. Violation of Requirements for Self-Assessments – BJC’s self-assessment processes failed to identify the broad classified information security and physical security noncompliances disclosed by this event. (See Violations, section II.)
3. Violation of Requirements for Classification Markings – BJC failed to ensure the marking of gaseous diffusion classified matter (i.e., barrier manufacture equipment and boxes containing unused/used barrier matter) to indicate the classification Level and Category. (See Violations, section III.)

Violations

I. Violation of Requirements for Information Protection

DOE Manual 470.4-4, *Information Security* (Chg. 1, June 29, 2007, and the prior version issued on August 26, 2005), Section A, ¶ 2.a. states that “[c]lassified information and matter that is generated, received, transmitted, used, stored, reproduced, or destroyed must be protected and controlled.” Section A, Chapter I, ¶ 4.a. requires that “[s]trategies for the protection and control of classified matter must incorporate the applicable requirements established in this section. In addressing the threat to Departmental assets, emphasis must be placed on security systems that will prevent, detect, or deter unauthorized disclosure or modification, loss of availability, and unauthorized removal of classified matter.”

Contrary to the above requirements, BJC failed to ensure an effective and integrated approach to secure classified matter stored in K-1037 and deter the unauthorized removal of classified matter. Specific examples include the following:

1. Based on document reviews, interviews, and physical observations, the security enforcement investigation team determined that the security measures implemented for the open storage of classified matter in K-1037 failed to provide adequate protection and control as specified by the DOE security requirements set forth in applicable DOE Manuals.² The physical structure of K-1037 does not meet the protection standards (i.e., General Services Administration-approved security container, vault, or vault-type room) for the protection of classified

² DOE Manual 470.4-4, Section A, 1.a. and Section A, Chapter 1, 4.a., dated August 26, 2005.

matter.³ The security posture of K-1037 at the time of the security event was limited to balanced magnetic switches and/or locks on perimeter doors, inadequate interior alarm coverage, and a number of automated access control points.

2. BJC failed to seek a formal deviation⁴ from DOE requirements to allow the storage of classified matter in K-1037 in a manner not consistent with Departmental policies,⁵ either before or at the time of the security event.
3. The provided documentation, subsequent interviews, and an analysis of the patrol logs⁶ for time periods before and at the time of the security event (*i.e.*, September 1 through October 30, 2006) revealed an ineffective process to deter the unauthorized removal of classified matter from ETTP, and more specifically from K-1037. Two patrols (patrol 233 and patrol 266) were responsible for conducting random inspections at Portals 4 and 6. Discussions with BJC personnel determined that these portals were most often used by workers in K-1037.
4. The security enforcement investigation team found that there was more emphasis on inspection of employees for prohibited/controlled articles as they entered ETTP during the morning hours than on inspection of employees as they departed ETTP at the end of the workday.⁷ The patrol logs⁸ for the time periods prior to and at the time of the security event (September 1 through October 30, 2006) were analyzed during the Office of Enforcement's on-site investigation. The results revealed that during this two-month period, approximately 18 random inspections were conducted at Portal 4 and approximately 31 at Portal 6. Most of these inspections were conducted during the morning hours between 7 a.m. and 11 a.m. Only three inspections, one at Portal 4 and two at Portal 6, were conducted in the late afternoon, and none were conducted at the end of the workday (approximately 5 p.m.).
5. Based on discussions with BJC and protective force personnel, the investigation revealed that no random inspections were conducted at K-1037 at the end of the workday during the two months surrounding the event. As a result, the implemented process provided only minimal deterrence and little risk that the unauthorized removal of classified matter would be detected.

Collectively, these noncompliances constitute a Severity Level I violation.
Proposed Civil Penalty – \$300,000

³ *Id.*, Section A, Chapter 1, 8.

⁴ DOE Manual 470.4-1, Section M, 2.

⁵ DOE Manual 470.4-4, Section A, 1.a. and Section A, Chapter 1, 4.a.

⁶ Wackenhut Security Police, Patrol 266/233 Logs.

⁷ Wackenhut Security Police, Patrol 266/233 Logs.

⁸ *Id.*

II. Violation of Requirements for Self-Assessments

DOE Manual 470.4-1, *Safeguards and Security Program Planning and Management* (Chg. 1, March 7, 2006, and the original version issued on August 26, 2005), requires that “[c]ontractors must conduct self-assessments ... and include all applicable facility [Safeguards and Security (S&S)] program elements. The self-assessment must ensure the S&S objectives are met.” *Id.* at Attachment 2, Part 1, Section G, at ¶ 2.a.(6). DOE Manual 470.4-1 also states that an objective of these self-assessments is to “[p]rovide assurance to the Secretary of Energy, Departmental elements, and other government agencies (OGAs) that [S&S] interests and activities are protected at the required levels.” *Id.* at Attachment 2, Part 1, Section G at ¶ 1.a.

Contrary to the above requirements, BJC self-assessment processes were not comprehensive or effective in self-identifying noncompliances or broader programmatic issues. Specific examples include the following:

1. BJC’s self-assessments failed to identify multiple security program noncompliances before they were disclosed in January 2007 through investigation of the October 2006 security event. The documentation provided by BJC and subsequent DOE ORO interviews of ETTP personnel indicated that not all classified matter storage locations were included in self-assessments; in fact, the 2006 self-assessment⁹ did not include a physical security review of K-1037. In addition, both the 2005 and 2006 assessments¹⁰ were limited to a classified matter protection and control assessment questionnaire provided to custodians of classified repositories. The questionnaire elicited only limited information about the status of the repository and did not provide for assessment of performance or compliance with DOE requirements.¹¹
2. BJC’s response to the security event¹² disclosed noncompliances in the implementation of the Departmental requirements related to security program planning and management, physical security, and information security. Furthermore, the self-assessment process was neither comprehensive nor effective in identifying noncompliances or broader programmatic issues. A more rigorous and comprehensive self-assessment program should have identified the longstanding, fundamental security noncompliances and should have resulted in corrective actions to provide the required deterrence necessary to prevent this security event.

Collectively, these noncompliances constitute a Severity Level I violation.
Proposed Civil Penalty – \$300,000

⁹ BJC East Tennessee Technology Park, Safeguards and Security Self-Assessment Report, Calendar Year 2005, dated April 2006.

¹⁰ *Id.*, and BJC East Tennessee Technology Park, Safeguards and Security Self-Assessment Report, Calendar Year 2006, dated May 2007.

¹¹ DOE Manual 470.4-4, *Information Security*, Section A, Chapter I-III.

¹² East Tennessee Technology Park Fact Sheet, dated January 27, 2007, and Chronology of Event, dated December 6, 2007.

III. Violation of Requirements for Classification Markings

Title 10 C.F.R. section 1045.40(a) states that “[Restricted Data (RD)] classifiers shall ensure that each RD and [Formerly Restricted Data (FRD)] document is clearly marked to convey to the holder that it contains RD or FRD information [and] the level of classification assigned.” Section 1045.3 defines a document as “the physical medium on or in which information is recorded, or a product or substance which contains or reveals information, regardless of its physical form or characteristics.”

DOE Manual 470.4-4, *Information Security* (Chg. 1, June 29, 2007, and the prior version issued on August 26, 2005), Section A, Chapter II, ¶ 3.a.(1) states that “[c]lassified matter, regardless of date or agency of origin, must be marked to indicate at least the classification level and category (if RD or FRD).”

Contrary to the above requirements, BJC failed to ensure that classified matter stored in K-1037 (barrier manufacture equipment and boxes containing unused/used barrier matter) was marked as C/RD. Specific examples include the following:

1. The security enforcement investigation team found that the classified matter involved in the security event was not marked (barrier manufacture equipment and boxes containing unused/used barrier matter), nor was any of the classified matter stored in K-1037 marked as required by 10 C.F.R. Part 1045 and DOE Manual 470.4-4.
2. The BJC phase I demolition security plan¹³ included a requirement to mark classified documents and materials with the appropriate classification level and category. Although requirements for classified markings for the classified matter in K-1037 have been in place for many years, BJC had never sought a formal deviation from the classification marking requirements¹⁴ or provided written notification of the classification to all recipients.¹⁵

Collectively, these noncompliances constitute a Severity Level II violation.
Proposed Civil Penalty – \$150,000

IV. Assessment of Civil Penalties

DOE proposes the assessment of a civil penalty for the violations identified above, in consideration of the gravity of the security breach, the level of classification associated with the stolen material, the inadequate security measures to deter and detect the removal of classified matter, and the longstanding nature of the noncompliant security conditions at **ETTP** prior to the security event.

¹³ BJC/OR – 2592 Security Plan for Demolition of K-1037, Rev 0, dated August 2006.

¹⁴ DOE Manual 470.4-1, Section M, 2..

¹⁵ DOE Manual 470.4-4, Section A, Chapter II, 3.c.(5).

A. Severity of the Violations

The significance or gravity of the security breach is a primary factor in DOE's determination of an appropriate civil penalty. In this case, classified barrier matter used in ETTP's uranium enrichment process for the United States nuclear weapons program was unlawfully removed from K-1037. Appropriate handling and protection of barrier matter at the C/RD level is required because of the risk of assisting foreign countries, especially countries hostile to the U.S., in producing enriched uranium.¹⁶

BJC failed to ensure that classified matter (barrier manufacture equipment and boxes containing unused/used barrier matter) was **marked** with an appropriate classification level and category, as prescribed by DOE security requirements.¹⁷ Furthermore, classified matter stored in K-1037 has not been correctly marked for years.¹⁸

DOE holds its contractors accountable for the acts of their employees who fail to observe classified information security requirements. A BJC employee (hereinafter referred to as the Subject) was hired as a building trades laborer and was granted access to K-1037 in support of facility clean-up activities. Before starting this work, the Subject attended a security plan briefing¹⁹ that emphasized counterintelligence issues, identified gaseous diffusion components, and addressed classified matter protection and control. Contrary to this security training, the Subject willfully and unlawfully removed classified barrier material from the approved ETTP security area to his residence.²⁰ The fact that the Subject acted willfully does not excuse BJC's liability for its management deficiencies.

Both the Office of Enforcement investigation of and BJC's response to the security event²¹ disclosed several noncompliances in the implementation of DOE security program planning and management, physical security, and information security requirements. DOE is particularly concerned about the programmatic nature of the security noncompliances at ETTP, specifically those resulting from the clean-up activities as previously discussed. The security event resulted from BJC's failure to implement adequate security controls to prevent, detect, and deter the theft of classified matter.

B. Mitigation of Penalties

DOE provides strong incentives, through opportunity for mitigation, for contractors' timely self-identification and reporting of security noncompliances before a more

¹⁶ Email from Oak Ridge Office (ORO) Classification Officer, dated March 6, 2009, and Gaseous Diffusion Technology Background Information and Damage Assessment – Oakley Incident at East Tennessee Technology Park.

¹⁷ DOE Manual 470.4-4, Section A, Chapter II, paragraphs 3.c.(5) and d.(3).

¹⁸ Investigation Report at 11.

¹⁹ Security Plan Briefing, Demolition of K-1037 Phase I, Attendance Roster, dated October 16, 2006.

²⁰ Investigation Report, at 4.

²¹ East Tennessee Technology Park Fact Sheet, dated January 27, 2007 and Chronology of Event, dated December 6, 2007.

significant event or consequence arises. BJC security program weaknesses, as well as the unauthorized actions of the Subject, were identifiable and, if properly addressed, could have averted the security event. For example, BJC's annual self-assessment process failed to identify numerous noncompliances with respect to the protection of classified matter stored in K-1037.²² BJC only became aware of the theft following notification by the Federal Bureau of Investigation in January 2007; consequently, the Office of Enforcement finds that BJC is not entitled to mitigation for self-identification and reporting.

An additional key issue considered by the security enforcement investigation team is the timeliness and effectiveness of contractor corrective actions. After the security event, BJC immediately instituted additional protective measures, including an improved integrated security system, before performing additional work involving classified matter at K-1037.²³ In addition, on March 23, 2007, BJC submitted a formal deviation (variance request SO-OR-07-004)²⁴ from the requirement to store classified matter in a vault or vault-type room. BJC's variance request indicated that the enhanced protection implemented after the security event would ensure that classified matter stored in K-1037 was no longer subject to additional risk.

The investigation, however, revealed some inadequacies in BJC's corrective actions. During the enforcement investigation team's physical inspection of the exterior of K-1037, the doorways of two separate vent houses were found to be unsecured. The containers holding classified matter lacked the protection features established by BJC²⁵ (two protective-force-controlled security locks and two tamper-indicating devices) as well as inconsistent classification markings.²⁶

At the August 18, 2009, enforcement conference, BJC asserted that new protection measures are in place at K-1037, including the segregation of the barrier manufacturing section, reactivation of interior alarms, and periodic management reviews to ensure adequate security of ETTP facilities. In addition, entry and exit inspections, scheduled but not predictable by employees, have been implemented at the ETTP entry/exit portals, along with periodic reviews of inspection results by BJC. The BJC self-assessment program has been redirected from one characterized by limited spot checks to a more comprehensive program that encompasses every ETTP classified storage location. In addition, the remaining classified matter (i.e., barrier processing equipment) in K-1037 has been covered and labeled as C/RD. BJC acknowledged, however, that a revised security plan will be required when the remaining barrier processing equipment is eventually removed from K-1037. The containers of classified barrier matter that were removed from K-1037, now stored in

²² BJC East Tennessee Technology Park, Safeguards and Security Self-Assessment Report, Calendar Year 2005, dated April 2006 and BJC East Tennessee Technology Park, Safeguards and Security Self-Assessment Report, Calendar Year 2006, dated May 2007.

²³ BJC/OR – 2777 Environmental Management, Security Plan, K-1037 Building Clean-Up Project, dated March 21, 2007.

²⁴ Variance Request SO-OR-07-004, approved March 26, 2007.

²⁵ *Id.*

²⁶ Investigation Report at 20-21.

building K-1065B, remained unmarked at the time of the enforcement conference.²⁷

Although BJC immediately implemented corrective actions following the security event, shortcomings were identified during the enforcement investigation that cast doubt on the effectiveness of some corrective actions. At the enforcement conference, however, BJC presented additional corrective actions taken to address these concerns about effectiveness. As a result, the Office of Enforcement finds that BJC is entitled to 25 percent mitigation for corrective actions.

C. Civil Penalty

The Office of Enforcement concludes that a substantial penalty is fully warranted in this case. While civil penalties assessed under 10 C.F.R. Part 824 should not be unduly confiscatory, they should nonetheless be commensurate with the gravity of the violations at issue. In this regard, DOE considered the nature, number, and severity of the violations found here, as well as the circumstances of the case.

In light of these considerations, DOE proposes the imposition of a civil penalty of \$750,000 for two Severity Level I and one Severity Level II violations, less 25 percent mitigation for corrective actions, resulting in a total civil penalty in the amount of \$562,500. The proposed penalty is based on the foregoing discussion and reflects the decision to: 1) escalate the maximum civil penalty for each violation on a per-day basis as a continuing violation; and 2) award partial mitigation for corrective actions.

Opportunity to Reply

Pursuant to the provisions of 10 C.F.R. § 824.6, BJC may, within 30 calendar days of receipt of this PNOV, submit a written reply. Please send such reply by overnight carrier to the following address:

Director, Office of Enforcement
Attention: Office of the Docketing Clerk
U.S. Department of Energy
19901 Germantown Road
Germantown, MD 20874-1290

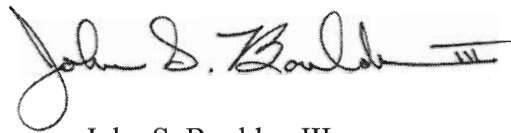
Copies of any reply should also be sent to the DOE Environmental Management Program Office Manager and/or Oak Ridge Office Manager, and to my office.

The reply should be clearly marked as “Reply to a Preliminary Notice of Violation” and, in accordance with 10 C.F.R. § 824.6(b), should include the following information for each violation: (1) facts or arguments that refute the PNOV’s finding of violation; (2) information that demonstrates extenuating circumstances or other reasons why the proposed penalty should not be imposed or should be reduced; (3) any relevant rulings or

²⁷ Bechtel Jacobs Company, LLC Enforcement Conference Presentation, dated August 18, 2009.

determinations that support the positions asserted; and (4) copies of any documents cited in the reply that have not previously been provided. If additional mitigation of the proposed civil penalty is requested, BJC should address the adjustment factors described in 10 C.F.R. Part 824, Appendix A. Copies of all relevant documents shall be submitted with the reply. Corrective actions that have been or will be taken to avoid further violations should be delineated, with target and completion dates, in DOE's Safeguards and Security Information Management System.

Pursuant to 10 C.F.R. § 824.6(c), if BJC does not submit a written reply to the Director within 30 calendar days of receipt of this PNOV, BJC relinquishes the right to appeal any matter in this PNOV; and this PNOV, including the proposed penalty, will constitute a Final Order. If BJC agrees to comply with the proposed remedy and waives any right to contest the PNOV, the penalty of \$562,500 must be paid, within 30 calendar days after receipt of this PNOV, by check, draft, or money order payable to the Treasurer of the United States (Account 891099) and mailed to the Director, Office of Enforcement, Attention: Office of the Docketing Clerk, at the above address.

A handwritten signature in black ink, reading "John S. Boulden III". The signature is written in a cursive style with a horizontal line at the end.

John S. Boulden III
Acting Director
Office of Enforcement
Office of Health, Safety and Security

Washington, D.C.
this 16th day of July 2010